IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1083 OF 2005

Shri Chandrakant Pandurang Padekar & Ors. : Petitioners
(Orig. Defendants)

V/s.

Shri Ananda Maruti Padekar : Respondent
(Orig. Plaintiff)

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Mr.M.R.Suryawanshi for the petitioners.

None present for the respondent.

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CORAM : S.A. BOBDE, J.

June 20, 2005.

P.C.:

1. This petition is directed against the order of the Civil Judge, Junior Division, Ajara, dated 10.2.2004 refusing to set aside the order that the suit to proceed without written statement. The learned Civil Judge, Junior Division, Ajara, has observed that the petitioners-defendants are negligent and want to prolong the hearing of the suit.

2. The following facts of the case do not warrant interference by this Court:-

The summons was served on the defendants on 8.9.1998. Since the defendant nos.1 to 3 remained absent, though served, the suit proceeded ex parte against them by orders dated 11.6.1999 and 8.10.2001. On 17.9.1998 the defendants appeared through an Advocate, but failed to file a written statement on record. The Court, therefore, ordered on 4.11.1998 the suit to proceed ex parte without a written statement. For five years the petitioners did nothing. Then on 13.10.2003 they filed an application for setting aside the no written statement order. The Court allowed this application subject to payment of costs of Rs.250/- by each defendant. The defendants failed to deposit the costs as ordered. On 3.11.2003 the defendants filed an application for allowing them to deposit costs of Rs.250/-. That application was allowed on the same day. The defendants, however, deposited costs of only Rs.250/- of one defendant. It appears that without complying with the order, the defendants sought permission of the Court for depositing only a part of the costs and as observed by the Court, for four days thereafter, they remained silent. The trial Court has taken a serious view of the matter and has observed that even on 13.10.2003 when their application for setting aside the order for the suit to proceed without a written statement was passed, the

petitioners were represented by an Advocate. Thereafter, the trial Court has restored the order which directs the suit to proceed without a written statement and the plaintiff has refunded the costs received from the defendants.

3. Mr.Suryavanshi, learned counsel for the petitioners, strenuously submitted that this was a mistake on the part of the petitioners. Going by the record of the Court, it does not appear to be merely that. The petitioners who are the defendants appeared to have known all along that their application to set aside the order to proceed the suit without written statement was made subject to the petitioners paying costs of Rs.250/- each. They were admittedly represented by an Advocate. In the circumstances, the observations of the trial Court that the defendants want to prolong the hearing of the suit appear to be justified. This is, therefore, not a fit case for exercise of extraordinary jurisdiction of this Court.

4. The petition is, therefore, dismissed.

S.A. BOBDE, J.